

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY S. PERNOD and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, Ind.

*Docket No. 96-1156; Submitted on the Record;
Issued March 17, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective September 17, 1995.

The Board has duly reviewed the case record and finds that the Office met its burden of proof to terminate compensation benefits.

In the present case, the Office accepted that appellant sustained a right arm contusion and abrasion, radial tunnel syndrome of the right arm and surgical release of the right radial tunnel. Appellant underwent a right radial release on March 10, 1992 and returned to light-duty work until May 17, 1993 when she stopped working due to severe pain in her upper right forearm and wrist. Appellant was authorized to receive compensation benefits. The Office terminated appellant's compensation benefits by decision dated September 17, 1995, stating that the evidence of record demonstrated that residuals of the accepted condition had ceased.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

The Office in terminating appellant's compensation benefits relied on the report of Dr. John T. Luros, a second opinion physician and a Board-certified neurological surgeon and

¹ *Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

neurologist, dated July 11, 1995. In his report, Dr. Luros considered appellant's history of injury, performed a physical examination, and concluded that appellant did not sustain any permanent neurological residual or reflex sympathetic dystrophy from her June 1, 1991 employment injury and subsequent surgery. He stated that the neurological examination was normal. Dr. Luros opined that appellant could return to full employment.

By letter dated September 25, 1995, appellant requested reconsideration of the Office's decision. Appellant submitted additional evidence consisting of a letter from the Office dated May 24, 1993 authorizing treatment by Dr. Mayer, a Board-certified internist with a subspecialty in pulmonary disease, a medical report dated August 9, 1993 from Dr. Mayer, reports dated February 27 and July 11, 1995 from Dr. Luros, and a disability note dated September 13, 1995 and reports dated September 5 and October 5, 1995 from Dr. Steven H. Neucks, appellant's treating physician and a Board-certified internist.

In his August 9, 1993 report, Dr. Mayer stated that appellant had been completely worked up, had not really improved significantly, and that her problem was chronic soft tissue pain. In his February 27, 1995 report, Dr. Luros considered appellant's history of injury and performed a physical examination noting that it was difficult to perform a neurological examination because of her cast. He concluded that he was unable to give a definite diagnosis due to her operation but stated that "with her operation she had some limitation in her hand though there certainly continue[d] to be a large functional element to all of her complaints and disabilities." In his September 5, 1995 report, Dr. Neucks considered appellant's history of injury, performed a physical examination, and diagnosed soft tissue pain, status post right radial tunnel syndrome and status post carpal tunnel release. He stated that appellant's soft tissue pain problems related directly to the June 1, 1992 employment injury. Dr. Neucks stated that it was uncertain how soft tissue injuries and nerve injuries yield chronic soft tissue pain, and that "as many as 30 percent of such cases of fibromyalgia [were] indeed induced by traumatic injuries." In his October 5, 1995 report, Dr. Neucks reiterated his diagnosis of soft tissue pain or myofascial pain of the right upper extremity and carpal tunnel syndrome and myofascial pain on the left upper extremity, and stated that appellant required restrictions of no repetitive activity with her upper left or right extremity. In his September 13, 1995 disability note, Dr. Neucks stated that appellant could not work from September 13 through December 13, 1995.

The record also contained some earlier reports dated January 29 and June 29, 1993 and March 10, 1994 from Dr. Thomas J. Fischer, a Board-certified orthopedic surgeon, from Dr. Kevin J. Puzio, a Board-certified psychiatrist and neurologist, and from Dr. Michael R. Burt, a Board-certified neurological surgeon, respectively. In his January 29, 1993 report, Dr. Fischer diagnosed that appellant had carpal tunnel syndrome directly related to the nature of her repetitive job activity and the injury where she sustained a blow to the dorsum of the forearm on a bar coder, and subsequent forearm surgery, swelling and inflammation.

In his June 29, 1993 report, Dr. Puzio considered appellant's history of injury although he did not address where the injury occurred, performed a physical examination, and stated he suspected mild carpal tunnel syndrome on the right. He saw no evidence of reflex sympathetic dystrophy, cubital tunnel syndrome or thoracic outlet syndrome.

In his March 10, 1994 report, Dr. Burt considered appellant's history of injury, performed a physical examination, and stated that appellant might have soft tissue pain syndrome and he had no way independent of the testing appellant had undergone to prove or disprove this. He opined that appellant was unable to work.

By decision dated November 21, 1995, the Office denied appellant's reconsideration request.

The July 11, 1995 report of Dr. Luros, a second opinion physician is sufficiently well rationalized and based on proper factual background. As such, it constitutes the weight of the medical opinion evidence. He stated that appellant's neurological examination was normal, there was no evidence of a reflex sympathetic dystrophy, and appellant could return to full employment. Dr. Luros was unable to give a definite diagnosis in his February 27, 1995 report. The September 5, 1995 report by appellant's treating physician, Dr. Neucks, is not probative because it is speculative and vague.³ Dr. Neucks diagnosed soft tissue pain, status post right radial tunnel syndrome and status post carpal tunnel release. He stated that appellant's soft tissue pain problems were directly related to the June 1, 1992 employment injury. He noted, however, that it was uncertain how soft tissue injuries and nerve injuries yield chronic soft tissue pain, and that "as many as 30 percent of such cases of fibromyalgia [were] indeed induced by traumatic injuries." His opinion is deficient in that he did not specifically explain how appellant's soft tissue pain, status post right radial tunnel syndrome and status post carpal tunnel release was caused by the June 1, 1992 employment injury. Dr. Neucks did not address causation in his October 5, 1995 report but reiterated his diagnosis and described appellant's restrictions. The reports of Drs. Puzio, Fischer, Mayer and Burt dated January 29, June 29 and August 9, 1993 and March 10, 1994, respectively, are not probative. Dr. Puzio provided no rationale in his June 29, 1993 report in which he stated that he "suspected mild carpal tunnel syndrome." Dr. Puzio also provided no rationale in his August 9, 1993 report in which he diagnosed chronic soft tissue pain and as noted, soft tissue pain was not an accepted condition. Dr. Fischer provided no rationale in his January 29, 1993 report in which he attributed appellant's carpal tunnel syndrome to appellant's repetitive job activity and the blow to her forearm. Dr. Burt's March 10, 1994 report was speculative in that he stated that appellant might have soft tissue pain syndrome. Further, he provided no rationale and soft tissue pain syndrome was not an accepted condition. Dr. Neucks September 13, 1995 disability note also provides no diagnosis and no rationale. The Board has held that reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁴ The Board finds the weight of the medical opinion evidence to be represented by Dr. Luros' July 11, 1995 opinion. The Office's September 17, 1995 decision terminating benefits will be affirmed.

³ See *William J. Wright*, 45 ECAB 498, 504 (1994).

⁴ *William C. Thomas*, 45 ECAB 591, 594 (1994).

The decisions of the Office of Workers' Compensation Programs dated November 21 and September 17, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 17, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member